

REMARKS

In response to the above-identified Office Action, Applicants seek reconsideration in view of the following remarks. In this response, Applicants do not add, cancel or amend any claims. Accordingly, claims 1-30 are pending.

I. Claims Rejected Under 35 U.S.C. § 103

Claims 1-4, 8-11, 12-15, 18, 19, and 27-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,831,621 issued to Pito (hereinafter "Pito"). Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness, the Examiner must show the cited references, combined, teach or suggest each of the elements of a claim. In regard to claim 1, this claim includes the elements of an orientation fixture and a digitizer that are "physically independent units without a predefined relative position." The Examiner relies on col. 5, lines 33-48 of Pito as teaching an orientation fixture and digitizer that do not have a predefined relative position.

Applicants have reviewed the cited section of Pito and have been unable to discern any part therein that teaches an orientation fixture and digitizer that are physically independent units *without a predefined relative position*. Rather, the cited section of Pito describes the relationship between a turntable and cylindrical scanner stating that the turntable "lies within the scanning area" of the cylindrical scanner. See col. 5, lines 38 and 39 of Pito. Col. 5, lines 40-44 of Pito states the turntable rotates and clearly implies that the cylindrical scanner is stationary relative to the turntable. This section then conceptualizes this relationship between the stationery scanner and rotating turntable as similar to if the turntable was fixed and the scanner rotated around the turntable along the perimeter of a circle that is centered on the turntable. See col. 5, lines 40-44 of Pito. Stated another way, Pito states that this cylindrical scanner has a fixed distance, i.e., the radius of the conceptual circle from the center of the turntable where an object to be scanned is placed. This fixed radius is a predefined distance, i.e., predefined relative position between the turntable and cylindrical scanner corresponding to the aforementioned scanning area of the scanner. Thus, Pito teaches a system where a predefined relative position exists prior to scanning predefined relative

between a scanner and a turntable. Further, applicants note that it is the burden of the Examiner to establish that a reference teaches each element of a claim.

For the sake of assisting the Examiner in understanding the meaning of a predefined relative position, Applicants compare one example embodiment described in the specification of the present application that describes a system where an orientation fixture may be placed in any position relative to a digitizer that is within detection range to the system of Pito. The orientation fixture and the digitizer of the embodiment have no *predefined* relative position to one another because the digitizer and orientation fixture have no location information at initialization about one another. After the digitizer has been activated and a scan initiated the digitizer must go through a process to locate the orientation fixture because it does not rely on predefined distance or location information. Determining the location of the orientation fixture may define a relationship with the digitizer, but what is claimed is that no *predetermined* relationship existed. In contrast, Pito clearly teaches that the cylindrical scanner relies on the turntable being a fixed distance from the scanner as discussed above and relies on the turntable boundary (i.e., the outer edge of the turntable) being coextensive with the viewer volume or scanning area of the scanner. See Figure 2A of Pito. Thus, Pito teaches a system that relies on a predefined relative position between a scanner and turntable, because it requires a turntable be placed at a fixed distance from the cylindrical scanner and the turntable be placed in predefined scanning area of the scanner. Therefore, the Examiner has failed to establish that Pito teaches or suggests each of the elements of claim 1.

In regard to claims 2-4 and 12, these claims depend from independent claim 1 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to independent claim 1, these claims are not obvious over Pito.

Further, in regard to claim 2, this claim includes the elements of at least one of a digitizer and an orientation fixture being capable of "automatically locating the relative position of the other." The Examiner argues that Pito teaches measuring a distance between a scanner and surface of an object to be imaged as being equivalent to determining the position of an orientation fixture. However, the range finding performed by the scanner taught by Pito relies on the scanner being

manually directed at the center of the turntable which the Examiner equates with the orientation fixture. The scanner of Pito does not locate the turntable it only measures the distance to it after it is located. It would be clear to one of ordinary skill in the art that the scanner of Pito would be incapable of locating the turntable, because Pito requires the scanner be positioned and directed to the center of the turntable. Range finding is not equivalent to automatically locating the relative position of an orientation fixture. Range finding merely determines the distance to an object which a scanner is already centered on. Locating a relative position involves identifying the object being located. Range finding does not identify an object. The Examiner has not indicated and Applicants have been unable to discern any part of Pito that teaches any system for identifying an orientation fixture. Thus, the scanner of Pito cannot be said to be capable of automatically locating the relative position of the turntable.

In regard to claims 8 and 9, these claims include the elements of a self-contained power source as part of the orientation fixture or the digitizer, respectively. The Examiner relies on Figure 1 to support an assertion that Pito inherently teaches a self-contained power source for each of the orientation fixture and digitizer. However, this assertion is improper as a drawing cannot be relied on to teach the elements of a claim unless the drawing shows explicitly the claimed structural features and how they are put together. See MPEP § 2125. Figures in patent applications, specifically Figure 1 of Pito, are abstractions that do not show every detail of a system. Thus, they cannot be used to teach internal structures of depicted abstracted objects. It is improper to assume that two objects would have their own self-contained power source merely because they are depicted as separate. These drawings are simply mute on the subject of internal structures. The Examiner supplied no reason why the scanner and turntable could not have external power sources. Patent drawings are unlikely to show power cords running to an outlet from each object depicted as it would obstruct the intended focus of the drawings. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claims 8 and 9.

In regard to claims 10 and 11, the Examiner's taking of official notice regarding a fixed point in space being used to establish position is inapposite for these claims. These claims relate to

an identifying feature used to allow a scanner to distinguish an orientation fixture from other objects. Thus, the Examiner has failed to even allege a *prima facie* case for claims 10 and 11. Accordingly, Applicants respectfully requests that the obviousness rejection of dependent claims 2-4 and 8-12 be reconsidered and withdrawn.

In regard to independent claim 13, the Examiner admits that Pito does not teach a digitizer and orientation fixture that are integrally coupled as a single unit. See page 5, of Paper No. 12. The Examiner attempts to justify this modification as being obvious based on the assertion that it would be obvious to "one of ordinary skill in the art to combine the independent units into a single unit for the purpose of creating a portable system as well as reducing the overall size of the system." The Examiner has failed to provide any indication in Pito of the desirability of such a modification. Thus, the Examiner has failed to establish the desirability of the proposed modification. See MPEP § 2143.01 "THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION." Further, the Examiner's rationale in support of the combination is false. Combining two independent units into a single unit does not necessarily render such a unit portable and does not reduce the overall size of the unit. In essence, the Examiner is proposing that some piece of material join the scanning camera and turntable of Pito to form a single integral unit. This does not alter the size of the scanning camera or turntable and would add additional material to join the two objects. Thus, the proposed modification would not necessarily produce a portable system or reduce the size of the system. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 13.

In regard to claims 14, 15, 18, and 19, these claims depend from independent claim 13 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to independent claim 13, these claims are not obvious over Pito. Further, in regard to dependent claim 18, for the reasons mentioned in regard to claims 8 and 9 above, Pito does not teach a self-contained power source for the system because the drawing in Figure 1 cannot be relied upon for teaching structures which are not illustrated.

In regard to independent claim 27, this claim includes the elements of a data analyzer to "identify points of interest and data collected when the digitizer and orientation fixture automatically rescan a portion of the object corresponding to a point of interest identified ... to improve quality of data previously captured." The Examiner has not indicated and Applicants have been unable to discern any part of Pito that teaches a data analyzer to identify points of interest to be rescanned to improve the quality of an image captured. Rather, the identified sections of Pito, col. 10, lines 40-65 and col. 11, lines 65-67, teach a system for calculating the next best view (NBV) and that the NBV calculating software can be "instructed to resample poorly sampled surfaces." Thus, the cited section of Pito teaches that poorly sampled surfaces may be resampled when explicitly instructed. The Examiner has not indicated and Applicants have been unable to discern any part of Pito that teaches data analyzers to identify points of interest to be rescanned. Pito teaches rescanning upon explicit instruction and does not teach identifying points of interest to be rescanned. Thus, the Examiner has failed to establish that Pito teaches each of the elements of claim 27. Accordingly, reconsideration and withdrawal of the obvious rejection of claim 27 are requested.

In regard to claim 28, this claim depends from independent claim 27 and incorporates the limitations thereof. Thus, at least for the reasons mentioned in regard to independent claim 27, Pito does not teach or suggest each of the elements of claim 28. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 28 are requested.

In regard to independent claim 29, this claim includes elements of a data analyzer to identify points of interest to be rescanned where the rescan is "conducted using a different capture method." The Examiner has not identified and Applicants have been unable to discern any part of Pito that teaches a rescan using a different capture method from the first original capture method. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claim 29. Applicant notes that rescanning at a higher accuracy level is not an alternative image capture method. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 29 are requested.

Claims 20-26 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,799,082 issued to Murphy, et al, (hereinafter "Murphy"). Applicants respectfully disagree for the following reasons.

In regard to claim 20, this claim includes the elements "receiving a request over a distributed network to authorize operation of a lockable image capture system at a node remote from the image capture system," and "sending an authorization data to the image capture system across the distributed network such that the image capture system is unlocked and enabled to capture an image." The Examiner relies on col. 15, lines 6-31 of Murphy for teaching these elements of claim 20. The Examiner argues that the system taught by Murphy to prevent image data from being downloaded serves the same purpose as the claimed elements. However, the cited section of Murphy teaches a system where digital frames after having been captured may be "frozen" in a storage module. See Murphy, col. 15, lines 19-31. Thus, Murphy does not prevent the use of the digital camera to capture images, but only prevents download after capture. Murphy does not prevent the viewing of the stored frame. See Murphy, col. 15, lines 6-10. This is not equivalent to what is claimed in claim 20. Claim 20 states clearly that the authentication data is provided to unlock and enable the capture of an image. See claim 20, lines 5 and 6. Murphy does not teach a system that controls locking and unlocking of an image capture system where locking and unlocking prevents or enables a capture of an image. Thus, Murphy does not teach each of the elements of claim 20. The Examiner has not identified and Applicants have been unable to discern any part of Murphy teaches or suggests modifying Murphy's system to control the capturing of images. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness for claim 20. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 20 are requested.

In regard to claims 21 and 22, these claims depend from independent claim 20 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to independent claim 20, these claims are not obvious over Murphy. Further, claim 22 includes the elements of "reprogramming a reconfigurable array of logic of the image capture system from a

remote node." The Examiner cites col. 13, lines 53-67 as teaching these elements of claim 22. However, the Examiner uses an erroneous understanding of the cited section as justifying the rejection. The cited section does not teach a digital camera that receives a reprogramming of reconfigurable array logic from a remote node. Rather, the cited section teaches a digital camera with a PDS signal receiver and processor that determines position information based on PDS signals received by the camera through the antenna. The PDS signal is not a signal from a remote node conveying programming information. Rather a PDS signal is similar to a global position signal (GPS). A PDS signal is a simple signal that is transmitted by satellite which a receiver and processor may utilize to determine the location of the receiving PDS processor. Thus, PDS processor determines its own location and does not receive any reprogramming from a remote node. See Murphy, col. 9, lines 46-60. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claim 22. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 21 and 22 are requested.

In regard to independent claim 23, this claim includes the elements of allowing access to captured image data "upon receipt of the authorization from a remote node on the distributed network." Again, the Examiner relies on col. 15, lines 6-31 of Murphy for teaching these elements of claim 23. The Examiner has taken the position that Murphy teaches that information be transferred back and forth to the digital camera that is part of a distributed network. However, the Examiner overstates the teachings of Murphy in this regard.

Murphy teaches a download port 47 and the reception of a software or hardware key that allows information download. The Examiner has not indicated and Applicants have been unable to discern any part of Murphy that teaches that either the download or the reception of the key may occur over a network connection. Further, the Examiner has not identified and Applicants have been unable to discern any part of Murphy that teaches modifying these teachings to utilize a network connection. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 23.

In regard to dependent claims 24-26, these claims depend from independent claim 23 and incorporate the limitations thereof. Thus, for the reasons mentioned in regard to independent claim 23, these claims are not obvious over Murphy. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 24-26 are requested.

Claims 5-7, 16, 17 and 30 stand rejected under 35 U.S.C. § 103 as being obvious over Pito in view of International Publication No. WO96/02106 to Vellacott (hereinafter "Vellacott"). Applicants respectfully disagree for the following reasons.

In regard to claims 5-7 and 16-17, these claims depend from independent claims 1 and 13 and incorporate the limitations therein. Thus, at least for the reasons mentioned in regard to independent claims 1 and 13 above, Pito does not teach or suggest each of the elements of these claims. Further, the Examiner has not indicated and Applicants have been unable to discern any part of Vellacott that teaches or suggests the identified elements of these claims that are not taught by Pito. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claims 5-7, 16 and 17.

In addition, Applicants reiterate their argument that Vellacott teaches away from using a host PC and advocates the use of wireless communication directly to network (i.e., without a host) when the camera must be used as a stand alone unit remotely deployed in the field. See page 8, paragraph 1, of Vellacott. Therefore, the use of a host as recited in Applicants' claims 5-6, 16, 17 and 30 is taught away from by Vellacott, which renders Vellacott inappropriate for combination with Pito. The Examiner has admitted in his response that Vellacott teaches using a host PC may be impractical and not cost effective. The Examiner argues that despite these teachings, Vellacott does teach it is known in the art. However, the Examiner must establish more than that Vellacott teaches an element of the claims, the Examiner must establish that Vellacott can be properly combined with Pito. The Examiner has the burden of establishing that the cited references teach the desirability of the proposed combination. Applicants have argued that this combination is inappropriate because the cited references do not teach the desirability of the combination and in fact teach away from such a combination. In response, the Examiner has done no more than argue

that the combination can be made and has not established that the combination is desirable. See MPEP § 2143.01. "THE PRIOR ART MUST SUGGEST DESIRABILITY OF THE CLAIMED INVENTION," and "FACT THAT REFERENCES CAN BE COMBINED OR MODIFIED IS NOT SUFFICIENT TO ESTABLISH PRIMA FACIE OBVIOUSNESS."

Further, a direct wireless transmission between a camera and a network neither teaches nor suggests a wireless link between a digitizer and an orientation fixture as recited in claim 7. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness for claims 5-7, 16, 17 and 30. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-30 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

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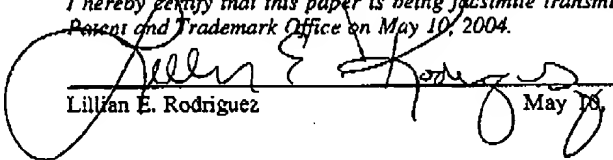


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